IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2004

C O R A M

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.11420 OF 1997
AND
W.M.P.NO.18296 OF 1997

M/s.South India Corporation
(Agencies) Limited,
Leelavathi Buildings,
No.69, Armenian Street,
Chennai-600 001. .. Petitioner

-vs-

1. The Deputy Port conservator,
Madras Port Trust,
Chennai-600 001.

2. The Traffic Manager,
Madras Port Trust,
Chennai-600 001. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus as stated therein.

For petitioner :: Mr.K.Bijai Sundar

For respondents :: Mr.Karthikeyan

:O R D E R

The writ petition is to issue a Writ of Certiorari calling for the records leading to the Order of the first respondent bearing Marine Service bill No.953, dated 21.7.1997 for the payment of a sum of Rs.11 ,76,120/- and quash the same.

2. The petitioner was appointed as agent for handling the vessel m.v. STRAMAN, which arrived at the Port of Madras on 9.9.1995. The vessel, which is a regular liner, carrying chemicals trading all over the world under a valid licence, sailed from United Kingdom and reached Port of Bombay. Thereafter it arrived at Port of Chennai on 9.9.199 5 with all the necessary documents on board. The necessary documents for berthing the vessel were filed with the statutory authorities. The vessel called at Madras Port and anchored at Madras Roadstead at 20.54 hrs. on 9.9.1995. As per the

request made by the petitioner for priority berth, the vessel berthed at Bharathi Docks-II on 13.9.199 5 at 10.24 hrs for loading the consignment. The loading was completed at 16.15 hrs. on 14.9.1995 and the vessel was due to sail to United Kingdom. The Port clearance was also granted for sailing of the vessel. At that time, the Mercantile Marine Department, constituted under the Merchant Shipping Act, 1958 to ensure the safety of the vessels, called upon the vessel to produce the Safe Manning Certificate. Thereafter, they directed the vessel to carry out certain repairs noted by them and also directed the vessel not to sail from Madras unless the repairs were carried out. The petitioner requested the Mercantile Marine Department to permit it to shift the vessel to anchorage for carrying out the repairs, but it went in vain. The petitioner had to carry out the repairs in the priority berth thereby incurring priority berth hire charges in addition to normal berth hire charges. Though the petitioner paid the berth charges, the respondents imposed the penal berth charges. The delay in sailing was not due to any fault, mistake or resistance on the part of the petitioner. The Bill for Rs.11,76,120/- was given as penal berth charges. This imposition of penal berth charges is not in accordance with rules. The vessel could not sail because of the order passed by the Authorities. Hence, the present writ petition.

3. In the counter filed by the respondents it is stated that as per the Port-Trust's Scale of Rates given under Clause 'G', Schedule II, Chapter XI Book I "any vessel which continues to occupy the berth in the Bharathi Dock for more than two hours after completion of discharge or loading or ballasting or after the expiry of the notice period (12 hours) given by the Deputy Port Conservator to vacate the berth shall in respect of such period of occupancy pay, additional berth hire charges at the rte of Rs.6,300/- [300 $] per hour or part thereof". The additional berth hire charges are leviable in addition to the normal berth hire charges payable. Although the ship completed the loading at 18.15 hours on 14.9.1995, the Mercantile Marine Department Authorities stopped the sailing of the vessel for want of Safe Manning Certificate. Therefore, the request for waiving of additional charges were not accepted. The deficiencies (repairs) pointed by the Mercantile Marine Department did not prevent the ship from moving to mooring/outer anchorage. Therefore, the demand of Rs.11,76,120/- is payable by the petitioner. It is the responsibility of the ship to keep onboard the Safe Manning Certificates and other safety equipment such as Deck fixed Foam fire Extinguishing system, aft peak tanks, ventilation, closing appliances, al fire extinguishers, cargo record book, deck log book, pump room, flooding system alarm, etc. in a satisfactory condition. It was the negligence on the part of the ship in not maintaining these equipment in satisfactory condition, and therefore the ship has to accept the liability. When the Mercantile Marine Department found the deficiencies in the safety measures in the ship, it prohibited the ship from sailing. As per the rules, the ship is bound to pay the additional charges for over stayal for more than two days. The argument that the additional charges are leviable only if berth is occupied intentionally is not acceptable. Hence, the petition is liable to be dismissed.

4. The learned counsel for the petitioner relied upon the judgment of this Court in Application Nos.1457/94 and 2474/94 in C.S.No.915/93

, where it has been observed that for levying additional berth charges, they should have rendered some service in addition to the service already rendered, and there is no evidence let in on behalf of the Port Trust as to how many vessels were deprived of the use of the present berth which is occupied by the ship. Therefore, imposing additional berth charges amounts to compelling the vessel being removed from that particular berth under threat of levying heavy charges and therefore, it amounts to penalty under Section 39 of the Major Port Trusts Act. Therefore, before imposing penalty, notice should have been given. Relying upon this judgement, the learned counsel for the petitioner submitted that the order imposing penalty is bad as no notice was given before imposing the penalty.

The learned counsel appearing for the respondents referred to the judgment of the Supreme Court in TRUSTEE, PORT OF MADRAS v.. AMINCHAND PYARELAL [AIR 1975 SC 1935] where the Supreme Court has held that 'Scale of Rates' framed under, Chapter IV, Rule 13(a)(b) of Madras Port Trust Act, exercising the power conferred under Sections 42, 43 and 43-A of the Act, is not ultra vires on the ground that it is ' unreasonable'. The rates are fixed exercising the power conferred under the Act and hence imposition of additional charges is not illegal. The Supreme Court further held -

"Port Trusts do not do the business of warehousing goods and the rates which the Board charges for storage of goods are not levied as a means of collecting revenue. The Board is under a statutory obligation to render services of various kind and those services have to be rendered not for the personal benefit of this or that importer but in the larger national interests. Congestion in the ports affects the free movement of ships and of essential goods. The scale of rates has therefore to be framed in a manner which will act both as an incentive and as a compulsion for the expeditious removal of the goods from the transit area. Ships, like wagons, have to be kept moving and that can happen only if there is pressure on the importer to remove the goods from the Board's premises with the utmost expedition."
The Supreme Court also held,
".. demurrage being a charge and not a service, the power of the Board is not limited to fixing rates of demurrage."

5. Under the Major Port Trusts Act, 1963 Sec.47-A a Tariff Authority for major Ports has been constituted. By virtue of Section 48, the Authority shall, from time to time, by notification in the Official Gazette, frame the scale of rates.

6. Admittedly, by notification dated 10.4.2000, the Tariff Authority has announced that imposing additional charges as permissible. If the petitioner is aggrieved on the quantum, it is for him to approach the appropriate civil court or such relief as he may deem fit. In as much as there is no illegality in the order of imposition of additional charges as it is authorised by statute and regulations under the rules, the prayer in the writ petition cannot be granted. The contention that imposition of additional charges is by way of penalty is not acceptable. It is not the penalty. It is only the charges as per the rules. Hence, the writ petition is devoid of merits and the same is dismissed. Consequently, WMP No.18296 of 1997 is

dismissed.

Index: Yes
Internet: Yes

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To

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Chennai-600 001.

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